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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

BLUE CROSS AND BLUE SHIELD
OF MARYLAND, INC.,

Petitioner,

v.

ROBERT WEINER, SR., MARGARET WEINER, MARK WEINER,
AND ROBERT WEINER, SR. AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF STEVEN WEINER,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTION PRESENTED FOR REVIEW

Did the United States Court of Appeals for the Eleventh Circuit err in failing to enforce the unique and extraordinary preemptive power of ERISA, as announced by Congress and this Court, by allowing a Florida state court to proceed with a case covered by ERISA over which it had no subject matter jurisdiction?

LIST OF PARTIES

Pursuant to Rules 21.1(b) and 28.1, Petitioner states that the following parties appeared in the United States Court of Appeals for the Eleventh Circuit:

a) Blue Cross and Blue Shield of Maryland, Inc.;[1]
b) Blue Cross and Blue Shield of Florida, Inc.;
c) Robert Weiner, Sr.;
d) Mark Weiner;
e) Margaret Weiner; and
f) Robert Weiner, Sr., as Personal Representative of the Estate of Steven Weiner.

[1]Pursuant to Rule 28.1, the corporate affiliates of Blue Cross and Blue Shield of Maryland, Inc. are listed in Appendix A.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The Petitioner, Blue Cross and Blue Shield of Maryland, Inc., respectfully requests that this Court issue a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The Opinion of the United States District Court for the Southern District of Florida (Kenneth L. Ryskamp, J.) is unreported and is reproduced in Appendix B. The Opinion of the United States Court of Appeals for the Eleventh Circuit (Joseph W. Hatchett, J.) is reported at 868 F.2d 1550 (11th Cir. 1989) and is reproduced in Appendix C. The decision of the United States Court of Appeals for the Eleventh Circuit denying Blue Cross and Blue Shield of Maryland, Inc.'s Suggestion of Rehearing In Banc (Joseph W. Hatchett, J.) is unreported and is reproduced in Appendix D.[2]

JURISDICTIONAL STATEMENT

The judgment of the United States Court of Appeals for the Eleventh Circuit was entered on April 5, 1989. On April 24, 1989, Blue Cross and Blue Shield of Maryland, Inc. filed a Suggestion of Rehearing In Banc. On May 15, 1989, the United States Court of Appeals denied Blue Cross and Blue Shield of Maryland, Inc.'s Suggestion of Rehearing In Banc. On May 30, 1989, the judgment of the United States Court of Appeals for the Eleventh Circuit was issued as a mandate. Thus, pursuant to Rule 20.4, Blue Cross and Blue Shield of Maryland, Inc.'s filing of the instant Petition at this time is proper. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

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[2] Copies of the Final Judgment and the Orders on Plaintiffs' Motion for Attorneys' Fees entered in this matter by the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida are reproduced in Appendix E and F, respectively. A copy of the Opinion of the Florida Fourth District Court of Appeal is reproduced in Appendix G.

RELEVANT STATUTORY PROVISIONS

Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1132 and 1144 (1985).

§1132. *Civil Enforcement*

(a) *Persons empowered to bring a civil action*
A civil action may be brought —

(1) by a participant or beneficiary —

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

(4) by the Secretary, or by a participant, or beneficiary for appropriate relief in the case of a violation of 1025(c) of this title;

(5) except as otherwise provided in subsection (b) of this section, by the Secretary (A) to enjoin any act or practice which violates any provision of this subchapter, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provision of this subchapter; or

(6) by the Secretary to collect any civil penalty under subsection (i) of this section.

. . . . .

(e) *Jurisdiction*

(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.

. . . . .

§1144. *Other laws*

(a) *Supersedure; effective date.*

Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

STATEMENT OF THE CASE

Stated simply, this case involves an insurance company's attempt to set aside a multi-million dollar judgment which is invalid under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1001 et seq., and which was rendered by a state court that had no subject matter jurisdiction.

The facts surrounding this dispute are as follows. Petitioner, Blue Cross and Blue Shield of Maryland, Inc. ("BCBSM"), is a non-profit Maryland corporation in the business of providing health insurance. In 1980, Association Financial Services, Inc. ("AFSI"), a brokerage firm that administers health insurance benefits for national level trade associations, decided to create a group health insur-

ance plan for the members of state service station dealers' associations that were affiliated with the Service Station Dealers of America ("SSDA"). BCBSM agreed to underwrite the plan.

Three contracts were executed naming the SSDA as the insured. The contracts created a "Group Plan" of health insurance. Enrollment was specifically limited to employees and dependents of employees of SSDA members. The Group Plan provided that participation (1) could only begin after BCBSM was notified that the applicant was an employee of an SSDA affiliate and (2) would be terminated on the last day of the month that a participant's employment status ended. The contracts required the SSDA affiliates to notify BCBSM each month of the changes in the status of employees.

The Group Plan contracts were assigned to AFSI which acquired the endorsement of the Allied Gasoline Retailers' Association of Florida ("AGRA"), the Florida affiliate of the SSDA. As a result, all of AGRA's members and their employees were eligible to enroll in the Group Plan. Blue Cross and Blue Shield of Florida, Inc. ("BCBSF"), a non-profit Florida insurance company, was the servicing plan for the Group Plan.

The Weiner Service Station ("Station") is located in Dania, Florida. Robert Weiner, Sr., Robert Weiner, Jr. and others work at the Station. Early in 1982, Robert Weiner, Sr. called AGRA's field representative, Al Jacobson, regarding the Group Plan. Jacobson subsequently met with Robert Weiner, Sr., explained the Group Plan to him, and gave him a benefit book. The benefit book stated that the coverage was only available to employees and their dependents and that when a participant's status as an employee ended, his insurance under the Group Plan ended. Since coverage was only available to employees of the Station if the Station was a member of AGRA, the Station joined AGRA and applied for insurance under the Group Plan. As a result, "the Station Plan" was formed.

Two applications were filled out for the Station's employees. Robert Weiner, Sr. applied for a "family policy," and his application listed him as an "employee" and showed "Weiner Service Station" as the "Name of Employer." Robert Weiner, Sr.'s family policy covered Robert Weiner, Sr. and his dependents, Margaret Weiner, Steven Weiner, and Mark Weiner. Robert Weiner, Jr. applied for an "individual policy," covering only himself, and his application also listed him as an "employee" and showed the "Weiner Service Station" as the "Name of Employer." Under the terms of the Group Plan, the Station was responsible for payment of premiums and the Station did pay the premiums for both Robert Weiner, Sr. and Robert Weiner, Jr.

In the Summer of 1982, Steven Weiner became seriously ill and was later diagnosed as having the Acquired Immune Deficiency Syndrome. Later that summer, Mark Weiner was involved in an accident and became a quadriplegic. Coverage for the Weiners was provided from the Summer of 1982 until August 8, 1983. On that date, BCBSM determined that Steven Weiner and Mark Weiner were no longer covered by the Group or Station plans and the payment of benefits was discontinued.

In September 1983, Robert Weiner, Sr. filed suit against BCBSM and BCBSF in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida (the "State Trial Court") alleging that they had improperly denied benefits to Robert Weiner, Sr. and consequently, breached their duty of good faith and fair dealing, breached their fiduciary duty, committed fraud, and violated Florida Statute 627.66.5.

In March 1984, BCBSM informed the Weiners that it would reinstate coverage and pay all back claims due and since that time, it has processed all claims and paid all contractual benefits due under the Group and Station Plans.

In December 1984, the original Complaint was amended and Margaret Weiner, Mark Weiner, and Robert Weiner, Sr.,

as Personal Representative of the Estate of Steven Weiner, were added as plaintiffs.

In December 1985, the Weiners filed a Second Amended Complaint. In that Complaint, the Weiners alleged that BCBSM and BCBSF had committed three common law torts — fraud, intentional infliction of mental distress, and negligence. The Second Amended Complaint sought recovery of compensatory and punitive damages resulting from BCBSM and BCBSF's alleged improper failure to pay plan benefits.

On September 25, 1986, a jury verdict was returned in favor of the Weiners. The jury found BCBSM liable for fraud, intentional infliction of mental distress, and negligence and returned a verdict against BCBSM for $500,000 compensatory damages and $5,000,000 punitive damages. The jury also found BCBSF liable for fraud and intentional infliction of mental distress and returned a verdict against BCBSF for $200,000 compensatory damages and $1,500,000 punitive damages. In addition, the State Trial Court awarded attorneys' fees to the Weiners against BCBSM and BCBSF jointly in the amount of $1,411,600 (based upon three times the lodestar rate calculation). BCBSM and BCBSF promptly noticed their appeal to the Florida Fourth District Court of Appeal (the "State Appellate Court").

On April 26, 1989, the State Appellate Court affirmed the State Trial Court's judgment and award as to BCBSM and reversed the State Trial Court's judgment and award as to BCBSF. BCBSM promptly filed a Motion for Rehearing and Rehearing En Banc which was denied.

On April 14, 1988, prior to the issuance of the State Appellate Court's decision, BCBSM filed a Verified Complaint and Request for Declaratory Judgment and Injunctive Relief in the United States District Court for the Southern District of Florida ("the District Court"). The jurisdiction of that Court was invoked pursuant to Section 502(f) of ERISA, 29 U.S.C. §1132(f). The Complaint sought a declaration that

the judgment rendered by the the State Trial Court be declared void and unenforceable and that the Weiners be enjoined from taking any further action before the State Appellate Court and from attempting to enforce the State Trial Court's judgment and award of attorneys' fees. The basis for the Complaint was, in essence, that federal preemption under ERISA divested the state court of subject matter jurisdiction over this action.

On April 20, 1988, BCBSF intervened in the District Court proceedings and filed its own Motion for Preliminary Injunction.

On May 17, 1988, the District Court denied the Motions for Preliminary Injunction and stayed proceedings in the District Court pending resolution of the case by the state courts.

On April 5, 1989, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's denial of the preliminary injunction and its order of abstention, and remanded this action to the District Court with instructions to dismiss it as it relates to the request for permanent injunction for lack of subject matter jurisdiction. The Eleventh Circuit's Opinion was based solely on the *Rooker-Feldman* doctrine and did not address any of the other issues before the Court. BCBSM filed a Suggestion of Rehearing In Banc which was denied. The case has since been dismissed in its entirety by the District Court.

REASONS FOR GRANTING THE WRIT

A. Introduction.

ERISA, enacted by Congress in 1974, is a complex and thorough law governing employee benefit plans. This Court has recognized that ERISA "comprehensively regulates, among other things, employee welfare benefit plans...", *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44 (1987), and has observed on several occasions that the provisions of ERISA "are deliberately expansive and designed to establish pension plan regulation as exclusively a federal concern." *Pilot*

Life, 481 U.S. at 46, quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981). In establishing ERISA's comprehensive scheme, Congress balanced ERISA's broad coverage with its limited remedies, thus effectuating a trade-off between coverage and liability which must be enforced and protected by the federal courts.

To ensure that ERISA remained a matter of exclusively federal concern and that participants and beneficiaries would have ready access to the federal courts, Congress provided that in all ERISA cases except those brought under §1132(a)(1)(B) — suits to recover plan benefits — the federal courts would have exclusive jurisdiction. 29 U.S.C. §1132(e)(1).

In order to make ERISA's remedies exclusive and nationally uniform, Congress also provided ERISA with a unique and extraordinary preemption provision. 29 U.S.C. §1144. This Court discussed the expansive nature of ERISA preemption in *Pilot Life*, wherein a plan participant whose benefits had been terminated alleged several state common law torts, including breach of fiduciary duty and fraud, and sought to recover compensatory damages for mental and emotional distress and punitive damages. This Court held that the plan participant's state common law tort claims were completely preempted by ERISA.

This Court began by recognizing the two basic tenets of ERISA preemption: (1) ERISA preempts any state law that "relates to" an employee benefit plan; and (2) the only exception to this rule is if the state law is one "which regulates insurance." 481 U.S. at 45. This Court held that under the "broad common-sense meaning" of the term "relates to," the participant's state common law torts alleging improper processing of claims under an employee benefit plan related to the plan. *Id.* at 47. In addition, this Court held that common law torts are not laws specifically designed to regulate insurance. *Id.* at 50-51. This Court therefore held that state common law torts based on alleged improper processing of claims under an employee benefit plan "undoubtedly meet the criteria for preemption." *Id.* at 48.

On the same day that this Court decided *Pilot Life*, it also decided *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987) and went one step further by holding that not only does ERISA preempt state common law torts, it totally displaces them. This Court referred by analogy to its prior decisions regarding the preemptive effect of §301 of the Labor Management Relations Act, 29 U.S.C. §185, which is so powerful that preemption -- normally a defense — becomes self-acting and destroys any state law claim infringing on the federal statute. This Court held that because ERISA's preemption provision was modeled after §301, ERISA similarly displaces state common law tort remedies with the remedies provided for in §1132(a).

Preemption of this magnitude is a matter of subject matter jurisdiction; therefore, this Court has held that if a state law claim is preempted, the state court loses its jurisdiction over the matter. *See Metropolitan Life*, 481 U.S. at 66-67; *see also Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 391-392 (1986).

As will be demonstrated below, the Weiners' state tort claims were preempted by ERISA and should have never been tried in the State Trial Court, which had no subject matter jurisdiction over them. The vitally important policies which Congress sought to protect by making ERISA a matter of exclusively federal concern are undermined by federal and state court decisions such as the decisions in the case at bar. Despite this Court's pronouncements regarding the unique and extraordinary preemptive power of ERISA, the Eleventh Circuit has permitted the Florida state courts to continue to apply tort law in a case which is obviously preempted by ERISA, the result being the imposition of a multi-million dollar judgment on an out-of-state insurance company. This Court should grant certiorari to prevent this miscarriage of justice, to rectify the dangerous misapplication of the *Rooker-Feldman* doctrine by the Court below, to clarify and define ERISA's preemption provisions, and to provide guidance to state and federal courts as to the scope of ERISA's coverage.

B. **This Court Should Grant Certiorari Because the Court Below Engaged in a Dangerous Misapplication of the *Rooker-Feldman* Doctrine**

It is a well-settled principle that federal court review of judgments rendered by state courts should normally occur in the Supreme Court. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 24 (1987) (Marshall, J., dissenting); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416 (1923); *see also Atlantic Coast Line R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286 (1970). This principle, commonly referred to as the *Rooker-Feldman* doctrine, normally bars a federal district court from acting as an appellate forum for a dissatisfied state court litigant.

In *Rooker v. Fidelity Trust Co.*, the Rookers executed to Fidelity Trust Co., as trustee, two warranty deeds to property. Judgment was entered for Fidelity, foreclosing the mortgage and directing a sale of the property. The trial court's decision was affirmed by the Indiana Supreme Court. The Rookers brought suit in federal district court seeking a declaration that the state court judgment was unconstitutional because it violated the Contract clause of the federal Constitution, as well as the due process and equal protection clauses of the fourteenth amendment. The Supreme Court held that the federal district court had no jurisdiction to review the state court judgment and therefore, affirmed the district court's dismissal of the action.

In *District of Columbia Court of Appeals v. Feldman*, the District of Columbia Court of Appeals denied the plaintiff's petition for a waiver of the District's bar requirement that an applicant must graduate from an accredited law school. In federal district court, Plaintiff alleged certain constitutional violations (which were not raised in the state court) and sought injunctive relief. On certiorari, the Supreme Court dismissed Plaintiff's claim for lack of subject matter jurisdiction, holding that federal district courts have no jurisdiction over constitutional challenges to state court decisions.

The *Rooker-Feldman* doctrine stands for the proposition that a district court cannot review state court judgments where "constitutional claims ... are inextricably intertwined" with the state court's judgment. *Feldman*, 460 U.S. at 483 n.16. Under *Rooker-Feldman*, in such instances "the district court is in essence being called upon to review the state-court decision" and therefore has no jurisdiction. *Id.* at 483-484 n.16.

The *Rooker-Feldman* doctrine stems from several basic principles, namely: (1) state courts are just as obligated and competent as federal courts to decide federal constitutional questions, and such constitutional issues may be avoided if the case is decided on state law grounds, *Moore v. Sims*, 442 U.S. 415, 430 (1979); *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 610-611, *reh'g denied*, 421 U.S. 971 (1975); *Feldman*, 460 U.S. at 482 n. 16; (2) a path is available through the state appellate system to the Supreme Court; and (3) a waste of judicial resources and unnecessary friction between state and federal courts might ensue if a federal district court intervened to override a state court decision. *See Pennzoil Co.*, 481 U.S. at 10-11; *see also Atlantic Coast Line R. Co.*, 398 U.S. at 286.

Invariably, the cases decided under the *Rooker-Feldman* doctrine center upon a federal constitutional challenge to state action. The federal court challenge is typically to a state court decision involving an issue of purely state concern. *See Texaco Inc. v. Pennzoil Co.: Some Thoughts On The Limits of Federal Court Power Over State Court Proceedings*, 54 Fordham L.Rev. 767 (1986); *Texaco, Inc. v. Pennzoil Co.: Beyond a Crude Analysis of the Rooker-Feldman Doctrine's Preclusion of Federal Jurisdiction*, 41 Miami L.Rev. 627 (1987); Chang, *Rediscovering the Rooker Doctrine: Section 1983, Res Judicata and the Federal Courts*, 31 The Hastings Law Journal 1337 (1980).

The Eleventh Circuit's application of the *Rooker-Feldman* doctrine in this case is a classic example of an attempt to fit a square peg into a round hole. As noted previously, one of the fundamental bases for the *Rooker-Feldman* doctrine is

this Court's belief that state courts are just as obligated and competent to decide federal constitutional questions as are federal courts, and such constitutional issues may be avoided if the case is decided on state law grounds. This rationale simply does not apply to the case at bar. Congress and this Court have said that jurisdiction over ERISA issues belongs in the federal courts; moreover, there are no state law issues involved, only exclusively federal ERISA issues. The state courts are not competent to decide ERISA issues — this is precisely the reason why Congress vested exclusive jurisdiction over ERISA issues in the federal courts. Moreover, there are obviously no federalism concerns in an area which Congress has designated as a matter of exclusively federal concern.

In no case, other than the case at bar, has any court ever applied the *Rooker-Feldman* doctrine where ERISA preemption was involved. Similarly, no court has ever held that the *Rooker-Feldman* doctrine prevents collateral attack in a federal court of a state court judgment where the state court lacks subject matter jurisdiction because of federal preemption. In the case at bar, the Court below did not dispute these facts — it simply ignored them.

The *Rooker-Feldman* doctrine is also inapplicable to the case at bar because the issue of ERISA preemption is not "inextricably intertwined" with the state court judgment. In *Feldman*, this Court held that Rooker prevents a district court from reviewing a state court judgment where the "constitutional claims presented to a United States District Court are inextricably intertwined" with the state court's judgment. 460 U.S. at 482 n.16.[3] In the case at bar, the State Trial Court tried only the tort claims raised by the Weiners and did not consider whether the case involved an ERISA plan. In fact, neither *Pilot Life* nor *Metropolitan Life* had been decided when the state court entered judgment. Thus,

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[3]This Court's explicit reference to "constitutional claims" is further evidence of the fact that the *Rooker-Feldman* doctrine applies only to cases involving a constitutional challenge to state action.

the ERISA preemption issue was not inextricably intertwined in its decision.

It is not merely an obvious misapplication of the *Rooker-Feldman* doctrine to apply it in an area that is uniquely federal; if the decision below stands, it will seriously undermine the important federal policies which led to the enactment of ERISA. This Court must grant certiorari in this case to protect these vitally important interests.

C. **This Court Should Grant Certiorari in Order to Clarify and Define the Unique and Extraordinary Preemption Provisions of ERISA.**

In *Metropolitan Life Ins. Co. v. Taylor*, this Court emphasized the unique and extraordinary nature of ERISA preemption. The Eleventh Circuit's decision below compromises the objectives of this expansive preemption by refusing to permit collateral attack of a judgment entered by a state court which had no subject matter jurisdiction because of ERISA preemption. The doctrine permitting collateral attack upon judgments entered without jurisdiction is firmly settled:

> . . . [W]hen a federal statute has vested exclusive jurisdiction of a particular type of case in the federal courts, the finding by a state court that it has jurisdiction over such a case would not preclude collateral attack upon the judgment rendered in the state court.

13 A. Wright, Miller and Cooper, *Federal Practice & Procedure, Jurisdiction*, §3536 at 539-540 (1984); 1B Moore, *Federal Practice* 0.405[4.-1] (1988).

In *Durfee v. Duke*, 375 U.S. 106, 114 (1963), this Court recognized the exception to the general rule precluding collateral attack when, as in the present case, federal preemption is involved. In *Durfee*, this Court cited its prior decision in *Kalb v. Feuerstein*, 308 U.S. 433 (1940), wherein this Court permitted a bankrupt farmer to collaterally attack a state court judgment on the grounds that Congress had pre-

empted state court jurisdiction in cases involving bankrupt farmers. This Court found that because Congress had preempted state court jurisdiction over this matter, the state court judgment "was not merely erroneous but was beyond its power, void, and subject to collateral attack." *Id.* at 438. This Court stated, in relevant part:

> "The States cannot, in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land. The Constitution grants Congress exclusive power to regulate bankruptcy and under this power Congress can limit the jurisdiction which courts, State or Federal, can exercise over the person and property of a debtor who duly invokes the bankruptcy law. If Congress has vested in the bankruptcy courts exclusive jurisdiction over farmer-debtors and their property, and has by its Act withdrawn from all other courts all power under any circumstances to maintain and enforce foreclosure proceedings against them, its Act is the supreme law of the land which all courts — State and Federal — must observe."

308 U.S. at 439 (footnote omitted).

Kalb was also recently followed by this Court in *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. at 391, wherein this Court held that when state court proceedings are preempted by the NLRA, "then state jurisdiction is extinguished."[4] *See*

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[4] Chief Justice Rehnquist wrote a concurring opinion in *Davis* that was joined by three other Justices. In that opinion, he disagreed with the majority's decision to allow the ILA to raise its NLRA preemption defense on appeal when the defense had not been timely raised at trial. Nevertheless, Chief Justice Rehnquist conceded that if Congress had specifically preempted state court jurisdiction, he would have permitted the NLRA preemption defense to be raised at any time. In the case at bar, Congress has expressly preempted state court jurisdiction and thus, even Chief Justice Rehnquist and the three other concurring Justices would recognize ERISA preemption in the present case.

also Gilbert v. Burlington Industries, Inc., 765 F.2d 320 (2nd Cir. 1985), *aff'd*, 477 U.S. 901 (1986); *General Motors Corp. v. Buha*, 623 F.2d 455 (6th Cir. 1980).

The lower court decisions in the case at bar establish that there is much confusion about the scope of ERISA's preemption provisions. Moreover, they reveal the natural tendency of a state court to be antagonistic to the notion that state tort claims are preempted by ERISA. It is understandable that a state court may be somewhat incredulous when faced with a claim that state tort law and remedies are completely displaced by ERISA. This case illustrates that state courts do misinterpret ERISA due to either their failure to understand its scope or their desire to protect their own tort law. Obviously, because of the natural reluctance of state courts to relinquish control over what they perceive as tort claims, litigants must be able to collaterally attack an erroneous state court decision respecting the scope of ERISA preemption — otherwise, ERISA's unique and extraordinary preemption provisions and its exclusive federal jurisdiction provisions will be devoid of any real meaning.

D. **This Court Should Grant Certiorari to Provide Guidance to Both State and Federal Courts as to the Scope of ERISA's Coverage.**

The scope of ERISA's coverage is immense. This is clear from ERISA's broad definition of the term "employee benefit plan" which provides that an employee benefit plan may be either an employee welfare benefit plan, an employee pension benefit plan, or both. 29 U.S.C. §1002(3). Section 1002(1) defines an employee welfare benefit plan as follows:

> [A]ny plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise . . . medical, surgical, or hospital care or

> benefits, or benefits in the event of sickness, accident, disability, death or unemployment. . . .

Thus, the five statutory components of an employee welfare benefit plan are: (1) a plan, fund or program, (2) established or maintained, (3) by an employer or by an employee organization or both, (4) for the purpose of providing benefits, (5) to participants or their beneficiaries. *See Donovan v. Dillingham*, 688 F.2d 1367, 1371 (11th Cir. 1982); *Ed Miniat, Inc. v. Globe Life Ins. Group, Inc.*, 805 F.2d 732, 738 (7th Cir. 1986); *Wickman v. Northwestern National Life Insurance Co.*, 9 EBC 1482, 1484 (D. Mass. 1987).

The State Appellate Court, after what can at best be termed a cursory analysis, found that the plan at issue was not an "employee welfare benefit plan." The State Appellate Court based its decision on its conclusion that Robert Weiner, Sr. was a sole proprietor of a business who simply purchased a group insurance policy for his family. This conclusion is not supported by fact or law. The Group Plan is a large plan, comprised of many employers and employees. It is sponsored by AGRA, an association of employers. ERISA specifically includes "associations of employers" in its definition of the term "employer." 29 U.S.C. §1002(5). Thus, it is undeniable that AGRA is an "employer" as defined in ERISA. The Group Plan provided AGRA members the opportunity to receive health insurance. Thus, the undisputed facts establish that the Group Plan meets the five statutory prerequisites set forth above and is an "employee welfare benefit plan."

The Station Plan also qualifies as an "employee welfare benefit plan." It has been generally held that an employee welfare benefit plan may be created without a formal, written plan. *Donovan*, 688 F.2d at 1372; *Blau v. Del Monte Corp.*, 748 F.2d 1348, 1352 (9th Cir. 1984), *cert. denied*, 474 U.S. 865 (1984); *Scott v. Gulf Oil Corp.*, 754 F.2d 1499, 1504 (9th Cir. 1985); *Wickman*, 9 EBC at 1485. In addition, the regulations establish that an employer needs only one common law employee to qualify as an employer under ERISA. 29 C.F.R.

§2510.3-3. The Station was obviously an employer since Robert Weiner Sr., Robert Weiner Jr. and others were employed at the Station, and both Robert Weiner Sr. and Robert Weiner Jr. applied for insurance under the Group Plan as employees of the Station. By joining the Group Plan, the Station provided its employees and their dependents with the opportunity to receive health insurance and formed an ERISA-covered employee welfare benefit plan.

The State Appellate Court's finding that the plans in question were not ERISA plans is an illustration of the vital importance of exclusive federal court jurisdiction over ERISA issues. As noted previously, state courts often do not understand the scope of ERISA or the policy trade-offs made by Congress as reflected in ERISA. In this case, the State Appellate Court ignored established federal court precedent and relied upon mere instinct to conclude that the plan at issue was not an ERISA plan. The State Appellate Court assumed that a small business owned by a sole proprietor would not be creating an ERISA plan by buying health insurance for two employees. However, federal court decisions establish that ERISA applies to all employers, whether large or small. The State Appellate Court overlooked the fact that many millions of American workers are employed by small business and that Congress wanted them and their employers to be covered by ERISA, the same as the workers and owners of big business. The State Appellate Court also overlooked the fact that the plan at issue is sponsored by an association of small employers, most, if not all, of whom would be unable to obtain similar insurance individually at the same rates. This Court must give meaning to the unique and extraordinary scope of ERISA's coverage and preemption which it announced in *Metropolitan Life Ins. Co. v. Taylor* and this is the case in which it should do so.

The state court judgments in this case are exactly the type of state judicial involvement which Congress intended to prevent when it enacted ERISA's broad preemption provision. This Court, in *Metropolitan Life Ins. Co. v. Taylor*, recognized that ERISA remedies displace those provided for in

state tort law. Had this suit been brought in federal court, as ERISA requires, the litigation would have taken a vastly different course.

First, extra-contractual damages, including punitive damages, are not recoverable in an action under ERISA. *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134 (1985). Although the holding of this Court in *Massachusetts Mutual* was expressly limited to ERISA §1109, numerous Circuit Courts of Appeal have since held that it is properly extended to ERISA §1132 cases, like the case at bar. *See Varhola v. Doe*, 820 F.2d 809 (6th Cir. 1987); *Kleinhans v. Lisle Savings Profit Sharing Trust*, 810 F.2d 618 (7th Cir. 1987); *Sokol v. Bernstein*, 803 F.2d 532 (9th Cir. 1986); *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enterprises, Inc.*, 793 F.2d 1456 (5th Cir. 1986), *reh'g denied*, 797 F.2d 977 (5th Cir. 1986), *cert. denied*, 479 U.S. 1034 (1987), *cert. denied*, 479 U.S. 1089 (1987); *Powell v. C&P Telephone Co. of Va.*, 780 F.2d 419 (4th Cir. 1985), *cert. denied*, 476 U.S. 1170 (1986). Thus, had this case been tried in federal court under established ERISA law, extra-contractual damages of any type, including punitive damages and damages for intentional infliction of mental distress, could not have been awarded. Under Florida tort law, however, these damages are recoverable. Consequently, because this case was decided under state common law and not ERISA, BCBSM and BCBSF were found liable for $7,200,000 in extra-contractual damages.

Second, the award of attorneys' fees would also have been very different if this case had been brought in federal court under ERISA. Although this Court has never addressed this issue, numerous federal courts have set forth detailed guidelines governing when attorneys' fees should be granted in an ERISA case. *Gray v. New England Tel. & Tel. Co.*, 792 F.2d 251 (1st Cir. 1986); *Ford v. New York Cent. Teamsters Pension Fund*, 506 F. Supp. 180 (W.D.N.Y.), *aff'd*, 642 F.2d 664 (2nd Cir. 1981); *Iron Workers Local No. 272 v. Bowen*, 624 F.2d 1255 (5th Cir. 1980); *Marquardt v. North American Car Corp.*, 652 F.2d 715 (7th Cir. 1981); *Lawrence v. Westerhaus*,

749 F.2d 494 (8th Cir. 1984); *Hummell v. S.E. Rykoff & Co.*, 634 F.2d 446 (9th Cir. 1980); *Eaves v. Penn*, 587 F.2d 453 (10th Cir. 1978); *McKnight v. Southern Life and Health Ins. Co.*, 758 F.2d 1566 (11th Cir. 1985). These Courts have held that in determining whether to award attorneys' fees, the factors to be considered are: (1) the degree of the opposing parties' culpability or bad faith; (2) the ability of the opposing parties to satisfy an award of attorneys' fees; (3) whether an award of attorneys' fees against the opposing parties would deter other persons acting under similar circumstances; (4) whether the parties requesting attorneys' fees sought to benefit all participants and beneficiaries of an ERISA plan or to resolve a significant legal question regarding ERISA itself; and (5) the relative merits of the parties' positions.

These factors were not considered by the Florida State Court in determining whether to award attorneys' fees in this case. Rather, the award of attorneys' fees was based on a provision of the Florida Statutes permitting the award of attorneys' fees in controversies over the coverage of insurance policies. Thus, the initial decision whether or not to award attorneys' fees at all would have been different had the case been brought in federal court under ERISA.

Moreover, the amount of attorneys' fees awarded under ERISA would have been different than the amount awarded by the State Trial Court. The Third Circuit has stated that Congress did not intend the award of attorneys' fees for private enforcement of ERISA to be used as a means to inflict punishment. *Ursic v. Bethlehem Mines*, 719 F.2d 670 (3d Cir. 1983).

In a myriad of federal attorneys' fees cases, including this Court's decisions in *Blum v. Stenson*, 465 U.S. 886 (1984) and *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the federal courts have established a well-structured procedure for the granting of reasonable attorneys' fees under federal law. The State Trial Court found that a multiplier of three should be used for a substantial portion of the total lodestar. The use of this multiplier produced an attorneys' fees award that is far from

reasonable. It is inconceivable that any federal court would have awarded three times the lodestar. Therefore, if this case had been litigated in the federal court, under ERISA, any award of attorneys' fees would have been considerably smaller, even assuming that the Weiners would have won.

Finally, the vast majority of the federal courts which have addressed the issue have held that jury trials are not permitted under ERISA. *See Chilton v. Savannah Foods & Indus., Inc.*, 814 F.2d 620 (11th Cir. 1987); *Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003 (4th Cir. 1985); *Katsaros v. Cody*, 744 F.2d 270 (2nd Cir.), *cert. denied*, 469 U.S. 1072 (1984); *Cox v. Keystone Carbon Co.*, 861 F.2d 390 (3d Cir. 1988); *Turner v. CF&I Steel Corp.*, 770 F.2d 43 (3d Cir. 1985), *cert. denied*, 474 U.S. 1058 (1986); *Calamia v. Spivey*, 632 F.2d 1235 (5th Cir. 1980); *In re Vorpahl*, 695 F.2d 318 (8th Cir. 1982); *Howard v. Parisian, Inc.*, 807 F.2d 1560 (11th Cir. 1987). Under Florida law, however, a jury trial is permitted for tort actions. Therefore, if this suit had been brought under ERISA, it would have been decided by a judge and not a jury.

The Supreme Court in *Pilot Life* stated that the specific remedies set forth in §1132 represent a:

> careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans. . . . [T]he federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected in ERISA.

481 U.S. at 54. The state court judgment in the case at bar makes a mockery of this statement. The goals established by Congress in ERISA cannot be achieved unless all courts — state and federal — understand the unique and extraordinary nature of ERISA preemption and the importance of federal court jurisdiction over ERISA issues. This Court must grant certiorari in this case in order to prevent further misinterpretation of ERISA's provisions.

CONCLUSION

By invoking the *Rooker-Feldman* doctrine in this case, and thereby prohibiting a federal court from deciding the ERISA issues in this case, the Eleventh Circuit has failed to enforce the unique and extraordinary preemeptive power of ERISA, as announced by Congress and this Court, and has allowed the Florida state courts to proceed with a case covered by ERISA over which they have no subject matter jurisdiction. The *Rooker-Feldman* doctrine is plainly inapplicable to this case and should not be used to prohibit a collateral attack where vital federal interests are at stake.

For all of the foregoing reasons, BCBSM respectfully requests that this Court issue a Writ of Certiorari to review the decision rendered in the captioned-matter by the United States Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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